

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

ROBERT LEO BREEDEN,

Petitioner,

v.

**CIVIL ACTION NO. 3:05-cv-78
(BAILEY)**

**JOANN S. PERKINS AND
JAMES B. CRAWFORD, III,**

Respondents.

AMENDED ORDER ADOPTING REPORT AND RECOMMENDATION

By Standing Order entered on March 24, 2000, this action was referred to United States Magistrate Judge John S. Kaull for submission of a proposed report and a recommendation ["R & R"]. Magistrate Judge Kaull filed his R & R on June 22, 2007 [Doc. 23]. In that filing, the magistrate judge recommended that this Court grant defendant Crawford's Motion to Dismiss [Doc. 16] and that he be dismissed with prejudice as a defendant in the case. Additionally, the magistrate's report recommended that the plaintiff's claims against defendant Perkins also be dismissed and that the entire complaint be dismissed with prejudice.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were

due by July 9, 2007, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). No objections have been filed.

Accordingly, the Court hereby adopts the recommendations of Magistrate Judge Kaull [Doc. 23] and reiterates its own Order dated July 11, 2007 [Doc. 24]. This Court finds that the plaintiff has failed to state a claim for which relief can be granted against defendant Crawford. Therefore, the Court hereby **GRANTS** defendant Crawford's Motion to Dismiss [Doc. 16] and **DISMISSES with prejudice** Crawford as a defendant in this case. Further, for the same reasons, the plaintiff's claims against defendant Perkins are also **DISMISSED**, and the entire complaint is hereby **DISMISSED with prejudice**.

It is so **ORDERED**.

The Clerk is directed to mail copies of this Order to all counsel of record and the *pro se* petitioner.

DATED: July 12, 2007.

/s/ John Preston Bailey
JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE